

**EXHIBIT D**

**TO**

**DECLARATION OF SEAN F. CONNOLLY IN SUPPORT OF DEFENDANT  
CITY AND COUNTY OF SAN FRANCISCO, CHIEF OF POLICE HEATHER  
FONG, OFFICER SERNA AND OFFICER ARTIGA'S NOTICE AND MOTION  
FOR SUMMARY JUDGMENT AND/OR PARTIAL SUMMARY JUDGMENT**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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ESTHER HWANG,

Plaintiff,

vs.

Case No. C07-02718 MMC

CITY AND COUNTY OF SAN FRANCISCO,  
ET AL.,

Defendants.

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**CERTIFIED  
COPY**

Deposition of

EUGENE AINSWORTH

Tuesday, May 20, 2008

REPORTED BY: LESLIE CASTRO, CSR #8876

BONNIE L. WAGNER & ASSOCIATES  
Court Reporting Services  
41 Sutter Street, Suite 1605  
San Francisco, California 94104  
(415) 982-4849

1 towards the East Bay?

2 A. Right. It would be the east.

3 Q. Very good.

4 And you said there were three police officers  
5 to your left and one other further out towards the curb;  
6 correct?

7 A. Right.

8 Q. You saw a woman who you later learned was  
9 Ms. Hwang?

10 A. Right.

11 Q. Approach one of the officers near the building  
12 line?

13 A. The furthest to my left, right.

14 Q. One of the officers near the building line as  
15 opposed to the one out near the curb?

16 A. . Right.

17 Q. And you heard a conversation, you heard words  
18 being exchanged but you couldn't hear the words until  
19 the heard the officer's reply; is that correct?

20 A. I heard -- all I heard was the officer's  
21 reply.

22 Q. And it was if you would state it again,  
23 please.

24 A. "If I let you -- if I let you go and you get  
25 hurt, then I'm at fault."

1 Q. What happened next after you heard that?

2 A. She then asked the officer that was  
3 immediately -- right to my immediate left, the first  
4 officer -- the officer closest to me, which I believe  
5 was Artiga. And he says -- asked if she could cross the  
6 street there. He said, "No, if my boss sees you, then  
7 I'm going to be in trouble."

8 Q. First of all, can you describe Ms. Hwang or  
9 what you remember her looking like at that point when  
10 you first saw her?

11 A. At that particular moment, I just thought she  
12 was just another -- another one of the crowd walking up  
13 and down the street. I didn't notice anything peculiar  
14 about it at that moment.

15 Q. Do you remember what she was wearing, for  
16 instance?

17 A. She was wearing a, kind of, a stretch top that  
18 was sleeveless and, If I remember, shoulderless.

19 Q. Do you recall its color?

20 A. Maybe a blue or a green.

21 Q. And do you remember what she looked like?  
22 Whether she was old, young, had long hair, short hair?

23 A. She looked fairly young. At my age anybody  
24 looks young. She -- yeah, she looked young to me, yes.

25 Q. Was she with anyone when she first approached

1 closest to the doorway.

2 Q. So to recap here just on this point: She came  
3 up and approached one officer who was standing near the  
4 doorway close to the building line. Said something to  
5 him. He said words to the affect "I can't let you do  
6 that."

7 She then went to a second officer, said  
8 something else and you heard that officer reply that he  
9 would get in trouble by his boss if she were to do  
10 something?

11 A. Correct.

12 Q. What happened at that point?

13 A. Her male companion had said, "Let's go to the  
14 corner, use the crosswalk." And her reply was "I don't  
15 want to go to the fucking corner."

16 Q. Okay. I want to ask you a couple of follow-up  
17 questions here.

18 You heard the male companion say something  
19 about going to the crosswalk?

20 A. Right.

21 Q. Do you have a specific recollection of hearing  
22 the word "crosswalk"?

23 A. No. Because she had made a reply in three  
24 different instances. And twice I think she used the  
25 corner and once she used crosswalk. So it was --

1 Q. And how long was she in the store?

2 A. Maybe not more than two, three minutes.

3 Q. Did she -- did she appear to you as though she  
4 had been drinking or that she was intoxicated?

5 A. Yes.

6 Q. And why is that?

7 A. Just her manner, her leaning on the counter  
8 opening the cigarettes. The way she was supporting  
9 herself using the counter.

10 Q. How about the way she was talking to her male  
11 companion or the person behind the counter?

12 A. Well, she -- I didn't hear her say -- other  
13 than words that I've told you, I didn't hear really what  
14 she was saying before. When she asked for the  
15 cigarettes, that was just, you know, a pack of Marlboro  
16 reds.

17 I couldn't -- you know, but her features or  
18 her looks to me from all that I had seen on Broadway,  
19 she had been drinking. I mean, there was no doubt about  
20 that.

21 Q. And you've seen a lot of people drunk on  
22 Broadway?

23 A. Oh, have I ever.

24 Q. Did do you know who was working the counter,  
25 by the way?

1 Q. -- facing the store?

2 A. He was facing the store.

3 Q. Okay. Go ahead.

4 A. And I didn't hear any conversations or  
5 anything, she was too far away at the curb there. And I  
6 just figured they were just talking. I had glanced down  
7 the street, and then looked around as I normally do to  
8 see if there was anything else, you know, what else was  
9 going on.

10 When I looked back, she was standing right  
11 directly in front of the officer. And it looked to me  
12 from my vantage point that she was right up against him  
13 looking up and saying something to him right in his  
14 face.

15 Q. Did this strike you as a normal conversation  
16 or was she yelling at him or --

17 A. No. It did not strike me as a normal  
18 conversation. She was right up into his face. I  
19 couldn't tell whether they were saying anything. All I  
20 know is she was right up against him.

21 Q. Was she moving? Did she look like she was in  
22 an excited and agitated state?

23 A. He was standing so that his chest was out and  
24 his arms, kind of, back away from -- to, kind of, keep  
25 away from her (indicating).

1 A. Only on Fridays and Saturdays.

2 Q. So what happened when she was up against him,  
3 kind of, leaning toward him?

4 A. Then I saw Officer Artiga walk up behind her  
5 and take her by the shoulders and pull her back away  
6 from him (indicating).

7 Q. And when he -- when Officer Artiga pulled  
8 Ms. Hwang away from Officer Serna, did he do so  
9 violently or did he do so gently. I'm watching your  
10 hand gestures and it looks like it was with a slow  
11 motion. Was it slow or was it fast?

12 A. It's like he was trying to take all of her and  
13 just bring her back away. You know, just get her away  
14 from the other officer (indicating).

15 Q. It appears that he was trying to separate her  
16 from Officer Serna?

17 A. Right.

18 Q. And then what happened?

19 A. And then she began to kick backwards at him.

20 Q. Kick backwards is that what you said?

21 A. Right.

22 Q. What do you mean by that?

23 A. Well, she was trying to kick back at him to  
24 get him away from her.

25 Q. With her feet?



1 A. Right.

2 Q. Do you recall what type of shoes she was  
3 wearing?

4 A. She was wearing high-heels.

5 Q. And do you recall seeing the high-heels going  
6 back?

7 A. Oh, yeah.

8 Q. When you say kick at, you mean she was  
9 kicking --

10 A. She was trying to stomp him or she was either  
11 trying to kick him or stomp him, stomp his feet.

12 Q. And it was apparent to you that she was  
13 intentionally doing it?

14 A. Yes.

15 Q. Would you call it intentional? Those are my  
16 words.

17 A. Oh, yes.

18 Q. Could it have been an accident?

19 A. No. She was trying to kick.

20 Q. Did she do it more than once?

21 A. Yes.

22 Q. How many times did she do it?

23 A. That, I don't know. I couldn't tell you.  
24 Because I did notice her kicking back at him, how many  
25 times.....

1 Q. But it appeared to you that it was intentional  
2 rather an accidental or incidental?

3 A. Yes. It appeared to me definitely  
4 intentional.

5 Q. Did she kick him?

6 A. That -- I was told yes. But I did not  
7 actually see. I know she hit his leg.

8 Q. I just want --

9 A. I was told her -- her heel hit his foot.

10 Q. I just want you to tell me about what you know  
11 and we can talk about what you heard later. But right  
12 now I want to know what you saw, but right now I want to  
13 know what you saw.

14 Is it fair to say that you saw when she was  
15 kicking backwards at Officer Artiga is it fair to say  
16 that you saw her leg or foot make contact with his leg?

17 A. Yes.

18 Q. Did you see any other contact she made with  
19 Artiga when she was kicking backwards?

20 A. You mean with her feet?

21 Q. Correct.

22 A. Other than hitting her leg, she -- I wasn't  
23 paying that much attention to her feet other than the  
24 fact that I knew she was kick back at him.

25 Q. Did she do anything else of a physical nature?

1 A. She was then trying to pull away.

2 Q. Pull away from Artiga?

3 A. Pull away from Artiga.

4 Q. Then what happened?

5 A. Then that's when Officer Serna got a hold of  
6 her other arm. And Officer Artiga had one side, Serna  
7 had the other side, and she kept trying to struggle with  
8 him. That's when they decided to put handcuffs on her.  
9 They put handcuffs on her, and she was still fighting.

10 And then they took and walked backwards --  
11 like she was walking backwards until she was off balance  
12 and then they lowered her down to the sidewalk.

13 Q. When you say she was "still fighting" --

14 A. She was struggling, trying to get away.

15 Q. And this is while they were trying to get  
16 control of her or handcuff her?

17 A. Right. And even after they handcuffed her.

18 Q. You said that they lowered her to the  
19 ground --

20 A. Right.

21 Q. -- you said something to that effect?

22 A. Right.

23 Q. Did they actually lower her or did they throw  
24 her to the ground?

25 A. No, they lowered her to the ground.

1 Q. Why do you say that?

2 A. Because I've seen them arrest other people,  
3 and I've never seen them lower someone as easy as they  
4 lowered her.

5 Q. Did you see them actually handcuffing her?  
6 Actually, putting handcuffs on her (indicating)?

7 A. Yeah. Yeah, for the most part she was around  
8 one way and she was struggling, yeah, you seen her try  
9 to put the handcuffs on is her.

10 Q. And you're clear she was trying to resist  
11 handcuffing her?

12 A. Absolutely.

13 Q. And she was doing that how?

14 A. Literally trying to pull away.

15 Q. Pull away?

16 A. Right.

17 Q. Did you see the officers grab her remember as  
18 and put them behind her?

19 A. Yes; one officer had one arm one officer had  
20 the other arm.

21 Q. Can you describe how they did it, the action  
22 they used to do it or how slow or fast they did this  
23 aren't is it?

24 A. No to me it was a normal -- the normal way.  
25 They were just holding her arm back and, of course, they

1 STATE OF CALIFORNIA )

2 ) Ss.

3 COUNTY OF CONTRA COSTA )  
4

5 I hereby certify that the witness in the  
6 foregoing deposition, named EUGENE AINSWORTH, was by  
7 me duly sworn to testify the truth, the whole truth,  
8 and nothing but the truth in the within-entitled  
9 cause; that said deposition was taken at the time and  
10 place therein stated; that the testimony of said  
11 witness was reported by me,

12 LESLIE CASTRO,

13 A Certified Shorthand Reporter and disinterested  
14 person, and was thereafter transcribed into  
15 typewriting; and that the pertinent provisions of the  
16 applicable code or rules of civil procedure relating  
17 to the notification of the witness and counsel for the  
18 parties hereto of the availability of the original  
19 transcript of deposition for reading, correcting and  
20 signing have been complied with.

21 And I further certify that I am not of  
22 counsel or attorney for either or any of the parties  
23 to said deposition, nor in any way interested in the  
24 outcome of the cause named in said caption.

25 IN WITNESS WHEREOF, I have hereunto set my

1 hand and affixed my seal of office the 1st day of  
2 June, 2008 .  
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7 LESLIE CASTRO  
8 C.S.R. No. 8876  
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